IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND SIX

PRESENT
THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.17129 of 2006

Between:

K.Subba Rao.

..... PETITIONER

AND

1.The State Election Commissioner,
Office of the State Election Commission,
3rd floor, Budda Bhavan, M.G.Road,
Secunderabad, and 7 others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.17129 of 2006

ORDER:

This Writ Petition is filed seeking a Writ of Mandamus declaring the 5th respondent as disqualified to hold the post of Sarpanch for Pallekona Village, Battiprolu Mandal of Guntur District and to declare the petitioner as Sarpanch of

Pallekona Village, Battiprolu Mandal of Guntur District, and pass such other suitable orders.

Sri V.S.R.Anjaneyulu, the learned Counsel representing the writ petitioner, would maintain that when respondent No.5 is clearly disqualified, it cannot be said that the remedy is by way of election petition. The Writ Petition can be perfectly maintained. The learned Counsel placed strong reliance on a judgment of the Supreme Court reported in '***K.Venkatachalam vs. A.Swamickan***[1]'. It is stated that the 5th respondent is disqualified even for contesting the election as he was holding the post of Director of Water User's Assiociation. It is also stated that the petitioner secured highest number of votes after respondent No.5 and the petitioner to be declared as Sarpanch of the village. It is stated that the whole action of respondent No.5 in concealing the fact that he is Director of Water User's Assiociation is nothing but suppressing the material fact which disentitles him from contesting the election. Several other factual details also had been narrated.

On a *prima facie* reading of the averments made from Paras 4 to 8 of the affidavit filed in support of the Writ Petition, this Court is of the considered opinion

that several factual controversies are involved in the matter. Though the learned Counsel for the writ petitioner placed strong reliance on the decision of the Apex Court cited supra, on a careful analysis of the decision, this Court is of the opinion that the same is distinguishable on facts. Even otherwise, inasmuch as several factual controversies had been narrated in the affidavit filed in support of the Writ Petition, it would be appropriate for the writ petitioner to approach the concerned Election Tribunal by way of election petition.

With the aforesaid observation, the Writ Petition is disposed of. No costs.

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17th August, 2006

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[1] **AIR 1999 Supreme Court 1723**